IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH

CWP No.8483 of 2004
Date of Decision: 24.10.2006

Majhi Express Transport Service Regd., Patiala

Petitioner

versus

State Transport Appellate Tribunal, Punjab and others

Respondents

CORAM:- **HON'BLE MR. JUSTICE JASBIR SINGH**

HON'BLE MR. JUSTICE PRITAM PAL

Present: Shri Baldev Kapoor, Advocate for the petitioner
Shri P.S.Chhina, Additional Advocate General, Punjab
Shri Jagdish Marwaha, Advocate for respondent No.2
Shri Rupinder S.Khosla, Advocate for respondent No.5
Shri H.S.Sawhney, Senior Advocate with
Shri B.S.Giri, Advocate for respondent Nos.6 and 7

Jasbir Singh, J. (Oral)

By filing this writ petition, the petitioner has laid challenge to order dated 21.8.2000 (Annexure P/1), vide which, its application, for grant of stage carriage permit, on Pathankot Faridkot route, was dismissed. Further challenge is to the order dated 27.4.2005 (Annexure P/2), passed by respondent No.1, vide which, appeal filed by the petitioner, was dismissed.

It is an admitted fact that the Regional Transport Authority, Jalandhar, got published a notice on 22.2.1999, inviting applications for grant of four stage carriage permits, for plying two return trips daily, on Pathankot Faridkot via Mukerian etc. route. The petitioner was one of the applicants. Respondent No.2, vide order dated 21.8.2000, after considering comparative merits of the applicants, granted one regular stage carriage permit, with half return trip, to respondent No.3 and similarly one regular

stage carriage permit, with half return trip was granted to respondent No.4. Similar allotment was made in favour of respondent Nos.6 and 7. The petitioner being dissatisfied, filed an appeal, which was dismissed vide order dated 27.4.2005.

During pendency of appeal, it was stated by the petitioner that two route permits granted in favour of respondent Nos.3 and 4 were lying vacant. A report was sought from the competent officer and it was found to be correct. In that regard, the appellate Tribunal observed thus:-

> "*In this case it was reported by the appellants that permits granted to respondent No.2 and 3 are lying vacant. On their request, report in this regard was called from the Secretary RTA, Jalandhar. Vide his letter No.37 dated 5.4.05, Secy. RTA, Jalandhar has reported that permit granted to respondent No.3 has been surrendered by it on 1.6.2002. Vide another letter No.165/RTA/J dated 20.4.05, Secy. RTA Jalandhar has reported that respondent No.2 has not lifted the permit granted to it, so far."*

After noting above mentioned fact, prayer of the petitioner, for grant of, one of the route permits, lying vacant, was rejected on the ground that the Tribunal had already granted one route permit in favour of sister concern of the petitioner in Appeal No.982/97 on 9.11.2004 and further that the appeal filed, was barred by limitation.

Counsel for the petitioner, by placing reliance upon judgment of Hon'ble Supreme Court, in *S.V.Sivaswami Servai v. Hafez Motor Transport (Firm) and others, AIR 1991 Supreme Court 911,* states that the first reason, to decline prayer of the petitioner, is not justified and further that there was no delay in filing the appeal, as the appeal was filed within

time, from the date of knowledge. Counsel for the petitioner prays that the writ petition be allowed and the orders, under challenge, be set aside.

Prayer made has vehemently been opposed by Shri Chhina on the ground that if the permit, not lifted by the Punjab Roadways, is granted in favour of the petitioner, it will disturb the ratio fixed, for grant of stage carriage permits, to State Transport Undertakings, under 1990 Scheme. It has further been stated that as the appeal was barred by time and no sufficient reasons were shown for condonation of delay, as such, order passed by the appellate Tribunal, deserves to be upheld.

After hearing counsel for the parties, we feel that the present writ petition deserves to be allowed. It is not in dispute and was also noticed by the appellate Tribunal – respondent No.1, that after grant of one stage permit, with half return trip, respondent No.3 failed to lift that permit. Respondent No.4 lifted the permit, however, subsequently, the same was surrendered. Two route permits were lying vacant when appeal was decided. Merely because one stage carriage permit was granted in favour of sister concern of an applicant, is no ground to decline relief to that applicant, as has been held by the Hon'ble Supreme Court, under similar circumstances, in the case of *S.V.Sivaswami Servai's case (supra),* it was observed thus:-

> "*It is obvious that the grant of permit by the R.T.A. to the appellant refusing to consider the claim of respondent No.1 and some other applicants on merits solely on the ground that they had been granted one other permit in the same sitting is clearly untenable. The grant of a permit for another route to the respondent No.1 and some others could only be a relevant circumstance while assessing the comparative merits of all the*

applicants, but by itself it could not be decisive or sufficient to refuse consideration of their claim."

Not only this, a categoric statement has been made by counsel for the petitioner that the permit granted in appeal No. 982/97 on 9.11.2004, was challenged in CWP No.2892 of 2005, which was allowed on 11.8.2006, canceling allotment made in favour of sister concern of the petitioner. A specific statement has been made at the bar that neither the petitioner nor its sister concern owned any stage carriage permit, when order was passed by the appellate Tribunal.

In view of above mentioned facts, we feel that the Tribunal was not justified in declining grant of permit to the petitioner on the ground that its sister concern had already been granted one permit on 9.11.2004. It is also an admitted fact that the order passed by the State Transport Commissioner on 21.8.2000, was not communicated to any of the applicants, including the petitioner. As per averments made in grounds of appeal (Annexure P/3), the petitioner came to know about passing of the order on 14.9.2001, thereafter application was made for obtaining certified copy, which was supplied on 3.10.2001 and the appeal was filed on 29.10.2001. Time consumed by the office, in preparing certified copy cannot be read against the petitioner and furthermore, in view of ratio of judgment of this Court in *Indian Bus Service (Regd.), Malerkotla v. State Transport Appellate Tribunal, Punjab and others, (CWP No.3114 of 2003, decided on 4.8.2006)*, delay, if any, deserves to be condoned. Otherwise also, we feel that due to non-user of the permit, by the State Transport Undertaking, the public is the sufferer. Permit was granted to respondent No.3 in the month of August, 2000 and even after lapse of six years, the same has not been lifted, as such, it is not open to the State Transport

Undertaking, to raise any objection regarding grant of permit to the petitioner, which will definitely be helpful to the general public.

In view of above mentioned facts, this writ petition is allowed and respondent No.2 is directed to grant one stage carriage permit with half return trip daily, to the petitioner, on Pathankot Faridkot route. Needful be done within fifteen days from the date of receipt of a certified copy of this order.

(Jasbir Singh)
Judge

October 24, 2006 **(Pritam Pal)**
gk **Judge**